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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/692,967  | 10/24/2003  | Renne Cano           | 321-001             | 1848             |
| 33354   | 7590        | 08/19/2005           | EXAMINER            |                  |
| ETHERTON LAW GROUP, LLC<br>5555 E. VAN BUREN STREET, SUITE 100<br>PHOENIX, AZ 85008 |             |                      | FERGUSON, MICHAEL P |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |

3679

DATE MAILED: 08/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/692,967

**Applicant(s)**

CANO ET AL.

**Examiner**

Michael P. Ferguson

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 06 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 29, 2005 has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 31,32,36 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Dobson (US 4,666,129).

As to claim 31, Dobson discloses a barrier system to prevent access through an opening (open space) comprising:

a planar, accordion (Figure 8) barrier sheet **11** comprising a plurality of strips **12** with cutters connected to each other with rivets **21**;

wherein the planar accordion barrier sheet is operable in the plane between an extended condition (tape barrier **11** installed) whereby the planar, accordion barrier sheet substantially covers the opening and a retracted condition (tape barrier **11** not

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installed) whereby the planar, accordion barrier sheet does not substantially cover the opening (Figures 1,3,7 and 8).

As to claim 32, Dobson discloses a system wherein the planar, accordion barrier sheet **11** folds into equal sized, flat segments **12** when in the retracted condition (tape barrier **11** not installed; Figure 8).

As to claim 36, Dobson discloses a system wherein the cutters are razors (Figure 1).

As to claim 37, Dobson discloses a system wherein the cutters are barbs (Figure 1).

4. Claims 21-24, 26-35 and 38-40 are rejected under 35 U.S.C. 102(b) as being anticipated by Catalano et al. (US 2,990,880).

As to claim 21, Catalano et al. disclose a barrier system comprising:

a frame **14,16** (Figure 11) with a top, bottom, and two side portions **14,16** which define an opening;

a planar barrier disposed within the frame comprised of a plurality of strips **24,26** with cutters (edge flanges capable of cutting an intruder; Figure 9) that is operable in the plane between an extended condition whereby the planar barrier substantially covers the opening and a retracted condition whereby the planar barrier does not substantially cover the opening (Figures 6,9 and 11).

As to claim 22, Catalano et al. disclose a system wherein the top portion of the frame is a ceiling, the bottom portion is a floor, and the two side portions **14,16** are walls (Figure 11).

As to claim 23, Catalano et al. disclose a system comprising a barrier sheet (door or window pane; Figure 11) that is attached to the frame that covers the planar barrier.

As to claim 24, Catalano et al. disclose a system wherein the barrier sheet (door or window pane; Figure 11) is (inherently) glass.

As to claim 26, Catalano et al. disclose a system wherein the frame is a doorway (Figure 11).

As to claim 27, Catalano et al. disclose a system wherein the frame contains a window with an interior and exterior side and the planar barrier (door or window pane; Figure 11) is mounted on the exterior side of the window within the frame.

Applicant is reminded that the orientation of an object is based upon the angle from which it is viewed.

As to claim 28, Catalano et al. disclose a system comprising a sheet of glass (door or window pane; Figure 11) placed on the interior side of the window that covers the planar barrier.

Applicant is reminded that the orientation of an object is based upon the angle from which it is viewed.

As to claim 29, Catalano et al. disclose a system comprising a retraction compartment **36** located on the frame that can receive (via member **40**) the planar barrier when it is in the retracted condition (Figure 11).

As to claim 30, Catalano et al. disclose a system wherein the retraction compartment **36** is located on (adjacent) the top portion of the frame (Figure 11).

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As to claim 31, Catalano et al. disclose a barrier system to prevent access through an opening comprising:

a planar, accordion barrier sheet comprising a plurality of strips **24,26** with cutters (edge flanges capable of cutting an intruder; Figure 9) connected to each other with rivets **28**;

wherein the planar accordion barrier sheet is operable in the plane between an extended condition whereby the planar, accordion barrier sheet substantially covers the opening and a retracted condition whereby the planar, accordion barrier sheet does not substantially cover the opening (Figures 6,9 and 11).

As to claim 32, Catalano et al. disclose a system wherein the planar, accordion barrier sheet folds into equal sized, flat segments **24,26** when in the retracted condition (Figure 5).

As to claim 33, Catalano et al. disclose a system wherein the planar, accordion barrier sheet is placed within a frame **14,16** that is defined by top, bottom, and side portions **14,16** (Figure 11).

As to claim 34, Catalano et al. disclose a system comprising two barrier sheets (door or window panes; Figure 11) located on the frame that cover the planar accordion barrier sheet.

As to claim 35, Catalano et al. disclose a system wherein the two barrier sheets (door or window panes; Figure 11) are (inherently) glass.

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As to claim 38, Catalano et al. disclose a system comprising a retraction compartment **36** that can receive (via member **40**) the planar, accordion barrier sheet when it is in the retracted condition (Figure 7).

As to claim 39, Catalano et al. disclose a system comprising a retraction compartment **36** located on (adjacent) the top portion of the frame that can receive (via member **40**) the planar, accordion barrier sheet when it is in the retracted condition (Figure 7).

As to claim 40, Catalano et al. disclose a barrier system attached to an opening of a building for preventing access through the opening comprising:

a frame with an interior side and an exterior side that is defined by a top ceiling portion, a bottom floor portion, and two side portions **14,16**;

a planar barrier comprised of a plurality of strips **24,26** with cutters (edge flanges capable of cutting an intruder; Figure 9) wherein the planar barrier is operable in the plane between an extended condition whereby the planar barrier substantially covers the opening and a retracted condition whereby the planar barrier does not substantially cover the opening; and

two glass sheets (inherently, the door or window panes are double-paned windows) attached to both the interior side and the exterior side of the frame (Figures 6,9 and 11).

Examiner notes that claim 40 does not claim that the planar barrier is between the interior side and the exterior side of the frame, nor that the glass sheets are on both sides of the planar barrier.

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***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Catalano et al.

As to claim 25, Catalano et al. fail to disclose a system wherein the barrier sheet is plastic.

The applicant is reminded that the selection of a known material based upon its suitability for the intended use is a design consideration within the skill of the art. In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a system as disclosed by Catalano et al. wherein the barrier sheet is plastic as such material is a well-known, widely used and commercially available material within the art.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael P. Ferguson whose telephone number is (571)272-7081. The examiner can normally be reached on M-F (8:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (571)272-7087. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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DANIEL P. STODOLA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600